injury he may sustain, as may be within his power. Under the decision which we have just made in relation to the money in his hands, he will be able to retain that fund and any papers and documents belonging to his client until his claim shall be adjudicated in such action as the state may see fit to institute therefor.

An order to discharge the respondent as solicitor and counsel for the complainant in the second case will be granted.

No costs will be allowed to either party on these motions.

The subject of the lien of attorneys and counsel for fees will be found exhaustively discussed in the note to *Carpenter* v. *Sixth Av. Railroad Co.*, 1 Am. Law Reg. N. S. 410, and the right of counsel in the American states to sue for fees, in the note to *Kennedy* v. *Broun*, 2 Am. Law Reg. 357.

Supreme Court of Pennsylvania.

CATHARINE ALTER'S APPEAL.

Where two persons agreed to make mutual wills, but by mistake each signed the will of the other, and one died: *Held*, that he died intestate.

There being no will to reform, the legislature could not give a court power to establish it upon proof of the intent of the parties; such an act would be the divesting of a vested estate.

THIS was an appeal by Catherine Alter from the decree of the Register's Court of the county of Philadelphia.

The facts are stated in the opinion of the court, which was delivered by

AGNEW, J.—This is a hard case, but it seems to be without a remedy. An aged couple, husband and wife, having no lineal descendants, and each owning property, determined to make their wills in favour of each other, so that the survivor should have all they possessed. Their wills were drawn precisely alike, *mutatis mutandis*, and laid down on a table for execution. Each signed a paper, which was duly witnessed by three subscribing witnesses; and the papers were enclosed in separate envelopes, endorsed and sealed up. After the death of George A. Alter, the envelopes were opened, and it was found that each had, by mistake, signed the will of the other. To remedy this error, the legislature, by an act approved the 23d of February 1870, conferred authority upon the Register's Court of this county to take proof of the mistake and proceed as a court of chancery to reform the will of

George A. Alter, and decree accordingly. Proceedings were had, resulting in a decision of the Register's Court, that there was no will, and that the act to reform it was invalid, the estate having passed to and vested in the collateral line of kindred. From this decree an appeal has been taken by Catherine Alter. On this statement, the first inquiry is, was the paper signed by George A. Alter his will? Was it capable of being reformed by the Register's Court? The paper drawn up for his will was not a will in law, for it was not "signed by him at the end thereof," as the Wills Act requires. The paper he signed was not his will, for it was drawn up for the will of his wife, and gave the property to himself. It was insensible and absurd. It is clear, therefore, that he had executed no will, and there was nothing to be reformed. There was a mistake, it is true, but that mistake was the same as if he had signed a blank sheet of paper. He had written his name, but not to his will. He had never signed his will, and the signature where it was, was the same as if he had not written it at all. He therefore died intestate, and his property descended as at law. The difficulty lies not in the want of power of a Court of Chancery to reform a mistake in an existing will, where full equity power to that end is conferred by the law, but in the want of power to give an existence to that which had none before. And the objection to the validity of the act conferring the authority to decree the will, lies not in a want of power in the legislature to establish a will upon parol proof of the fact of making it, and of the intent to execute the proper paper, but in its want of power to divest estates already vested at law on the death of George A. Alter without a will. There being no will, it is evident that the effect of any subsequent legislation, call it by what name we may, is simply to divest estates. That this cannot be done is abundantly proved in *Greenough* v. *Greenough*, 1 Jones 494; *McCarty* v. *Hoffman*, 11 Harris 508; *Norman* v. *Heist*, 5 W. & S. 171; *Bolton* v. *Johnes*, 5 Barr 145; *Dale* v. *Metcalf*, 9 Barr 108; and other cases. The first two cases are directly in point, for it was held therein that the Act of Assembly validating wills where the testator had made his mark instead of signing his name, or expressly directing it to be signed for him, could not reach the case of a will so executed, where the testator had died before the passage of the Act.

The decree of the Register's Court is therefore affirmed.